IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7207 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PURAJI NATHAJI MARVADI

Versus

POLICE COMMISSIONER

Appearance:

1. Special Civil Application No. 7207 of 2004

MR HARSHAD K PATEL for Petitioner No. 1

MS HB PUNANI, AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 07/12/2004

ORAL JUDGEMENT

1. Heard ld. counsel Mr. Harshad Patel for the petitioner and ld. AGP Ms. Punani for the other side.

Affidavit in reply by the Police Commissioner, Vadodara City tendered today is taken on record.

2. By this petition under Article 226 read with Articles 21 & 22(5) of the Constitution of India, the petitioner detenu has challenged the legality and validity of the order of detention dated 26.05.2004 passed by the Police Commissioner, Vadodara City, in exercise of the powers conferred on him by Section 3(2) of The Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act) against the petitioner-detenu. The petitioner detenu has been branded as "boot-legger" as defined under Sec.2(b) of the PASA Act.

3. The grounds for detention supplied to the detenu petitioner indicate that the petitioner was found involved in two different offence punishable under Sections 66B, 65AE, 81, of the Bombay Prohibition Act, both registered at Makarpura Police Station. The first offence being Makarpura Police Station III CR No. 248/2004 was registered on 04.04.2004 and second offence being Makarpura Police Station III CR No. 255/2004 was registered on 06.04.2003. The detaining authority has also considered the statements recorded by the sponsoring authority on 12.05.2004 and 14.05.2004 and the same were verified by the detaining authority on 20.05.2004 and 24.05.2004. It is argued that there was no cogent material or cause for the authority to record satisfaction to the effect that the activities of the petitioner are prejudicial to the maintenance of public order and of public health.

4. The order under challenge is assailed on various grounds, but ld. counsel Mr. Patel has focussed his arguments on two points. The first point is that the authority has passed the order of detention at a belated stage and delay in passing the order of detention vitiates the validity of the order. This Court has, in number of cases, considered the date of registration of last offence as relevant and in the present case, last offence registered against the petitioner detenu is 06.04.2004 and the order of detention is passed on 26.05.2004. Thus, there is a delay of about 1 month and 20 days in passing the order of detention. There is no reasonable explanation found in the affidavit submitted today. It is true that the statements have been recorded on 12.05.2004 and 14.05.2004, but no justifiable explanation is given by the sponsoring authority as to why papers for obtaining preventive detention order were not placed before the authority for more than 1 month and 20 days and recording of statements of witnesses creates

doubt as to the genuineness of the allegations made in the statements. It seems that statements have been recorded only with a view prepare a case for preventive detention.

5. The second point raised by ld. counsel Mr. Patel for the detenu is that there is unexplained delay caused in communicating the decision by the State Government taken rejecting the representation made by the petitioner on 05.06.2004, though the same has reached to the office on 07.06.2004. The representation was rejected on 08.06.2004. A person who makes representation can reasonably infer that a representation which is forwarded on 05.06.2004 reaches to its logical end on 08.06.2004, atleast should be conveyed to him promptly. Time spent in communicating decision of about 4 days is not explained satisfactorily. Hence, on this ground also, the impugned order of detention requires to be quashed and set aside.

6. For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 26.05.2004 passed by the Police Commissioner, Vadodara City is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute.

Direct Service is permitted.

[C. K.BUCH, J]

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